



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,852	10/30/2000	Martin Peller	951/49160	8122

23911 7590 04/20/2005
CROWELL & MORING LLP
INTELLECTUAL PROPERTY GROUP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

EXAMINER

NGUYEN, DUSTIN

ART UNIT PAPER NUMBER

2154

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/623,852

Applicant(s)

PELLER ET AL.

Examiner

Dustin Nguyen

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

4

DETAILED ACTION

1. Claims 5 – 12 are presented for consideration.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/19/2004 has been entered.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 2154

4. Claims 5-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 and 5 of copending Application No. 10/114,316 [hereinafter '316 application]. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

Taking claim 1 as an exemplary claim, the '316 application contains the subject matter claimed in the instant application. As per claim 1, both applications are claiming common subject matter, as follows:

A process for operating a plurality of nodes through a configured data bus wherein said nodes are in communication with one another through said configured data bus, said method comprising the steps of

connecting at least one of said nodes ...;
providing synchronization pulses ...;
transmitting information signals from said nodes

The claims of '316 application do not specifically state the method steps in the same order as described in the claim 1 of the instant application. However, it would have been an obvious modification for one of ordinary skill in the art at the time the invention was made to perform the steps in the same order as claimed because doing so would have enabled the method to synchronize information from different nodes without communication error.

As per independent claim 9, it is also directed to the same subject matter recited in claim 1 above. Accordingly, they are provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

As per dependent claims 2-8, and 10-12 of the instant application, they are depending on the rejected claims. Accordingly, they are provisionally rejected under the judicially created doctrine of obviousness-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

5. Applicant's arguments filed 11/19/2004 have been fully considered but they are not persuasive.

6. As per remarks, Applicants' argued that (1) there is no indication in Weis that "start time is solely a function of the hierarchical transmission sequence".

7. As to point (1), Weis discloses the start time is solely a function of the hierarchical transmission sequence [i.e. relative position [e, f, b, c]] [col 7, lines 58-col 8, lines 25].

Claim Rejections - 35 USC § 102

Art Unit: 2154

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 5-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Weis et al. [US Patent No 5,621,895].

10. As per claim 5, Weis discloses the invention substantially as claimed including a process for operating a plurality of nodes through a configured data bus wherein said nodes are in communication with one another through said configured data bus, said method comprising the steps of

connecting at least one of said nodes through an optical transmission segment to said data bus configuration [glass fiber] [10a-b, 20a-b, 30a-b, 40a-b, 50a-b, 60a-b, Figure 1; and col 4, lines 60-63];

Art Unit: 2154

providing synchronization pulses to synchronize each of said nodes [col 8, lines 55-57; and col 10, lines 33-46];

transmitting information signals from said nodes with a hierarchical transmission sequence [col 2, lines 46-62; and col 6, lines 63-col 7, lines 14] including the step of starting transmission of said information signals so that said information signals are independent of any one of said nodes [col 7, lines 44-col 8, lines 18] and wherein said starting transmission has a start time which is solely a function of said hierarchical transmission sequence [Figures 2-4; and col 8, lines 44-50].

11. As per claim 6, Weis discloses the transmission start time for an information element for a predetermined node is set to be later than when said predetermined node had previously received an information element from another one of said nodes [col 9, lines 50-col 10, lines 7].

12. As per claim 7, Weis discloses the step of setting a delay time for each node within one cycle of said transmission sequence [3 and 3', Figure 1; and col 7, lines 14-33] wherein the length of said delay time is complimentary to a signal transit time between a predetermined node and said data bus [col 2, lines 52-55].

13. As per claim 8, Weis discloses the delay time is a function of the type of connection between a node and the data bus [col 7, lines 60-65; and col 8, lines 1-5].

Art Unit: 2154

14. As per claims 9-12, they are apparatus claimed of claim 5-8, they are rejected for similar reasons as stated above in claims 5-8.

15. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The examiner can normally be reached on flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Follansbee John can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

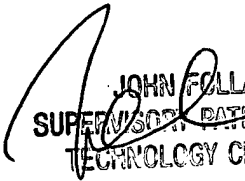
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/623,852

Page 8

Art Unit: 2154

Dustin Nguyen
Examiner
Art Unit 2154


JOHN FOLLANSBEE
SUPERVISOR, PATENT EXAMINER
TECHNOLOGY CENTER 2100